Dental Sleep Medicine
Risk Management

KEN BERLEY DDS, JD, DABDSM

Qualifications

- 1980 Graduate- University of Tennessee School of Dentistry
- 1995 Graduate- University of Arkansas Little Rock School of Law
- **Diplomate American Board of Dental Sleep Medicine**
- **Fellow American College of Legal Medicine**
- Full Partner- Travis, Borland and Berley Attorneys at Law
- Over 10 years experience in the treatment of Sleep Related Breathing Disorders.
- Over 32 years experience in the treatment of TMD
- **Member of the Bar in Arkansas and Texas**

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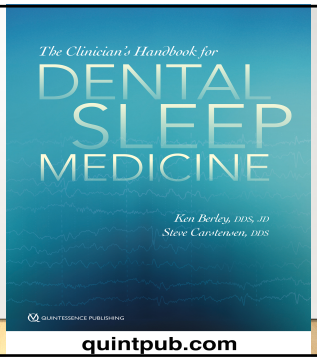
WARNING!!

- I have a STRANGE sense of humor!
  - *You can't take the Arkansas out of the boy!*
    - ***Not Politically Correct!***
    - I may not tell you what you want to hear, but I will always tell you the truth!
    - *"Truth and Nothing But the Truth"*
    - I have NO AGENDA!
    - I know I'm Repeating Myself!!!!!!
- SARCASM- It's just another service that I provide!!!!!

Disclosure?



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Disclosure!

Dental Sleep Apnea Team

- Mentoring & Coaching for DSM
- DSM Integration In-Office Training
- ***Audit Risk Assessment Program***
- DSM/TMD Forms & Consents
- ***Medicare DME Sign-up***
- Practice Development
- Referral Network Development
- ***On-line Educational programs***
- ***Dental Board Complaints***
- ***DSM Malpractice Consultation***

DSATsleep.com 877-217-2127

Disclaimer:

- ***Not giving legal advice!***
- Nothing that I say has been approved by ASBA
- Information Presented- Educational purposes only

#1 Weekend Goal

- Learn to think like a ***defense*** ATTORNEY!
- ***Develop your legal defense, before the problem occurs.***

Risk Management

Attorney's are paid to Worry!

- **Risk Assessment?**
  - **Don't Live in California!**
  - **Impossible** to avoid **ALL** Risk!
  - WHAT IF Game
    - Clumsy patient that falls in your office!!
    - If you have a car, home, or business you have risk.
      - Avoid risky behavior that has little/no reward.
      - Risk/Reward Evaluation
        - Don't be stupid!!!!

Why Am I Here?

- **SLEEP MEDICINE presents *unusual levels of risk for the physicians and dentists* who practice in this area!**
  - My goal explain the risk associated DSM, and
  - Outline a strategy to minimize your level of exposure.

- **Dr. Berley:**
- Counsel for co-defendant A_____ M_____provided your name to me.
- I am seeking a doctor with expertise in sleep apnea to consult on a case here in _____. My client is Dr. Z_____, board certified Oral and Maxillofacial Surgeon. Dr. Z_____ has been involved in treating patients with sleep apnea.
- Dr. Z_____ provided Mr. R_____with a _____appliance. **Mr. R_____ alleges Dr. Z_____ failed to properly evaluate whether Mr. R _____ was an appropriate patient for a ____ appliance, that he failed to properly instruct Mr. R_____ in use of the ___, that he failed to evaluate whether Mr. R_____was properly using the ____, that he failed to properly supervise the patient's use of the ___, and that he failed to obtain informed consent from the patient for use of the ___. Dr. Z____ denies all of these claims.**
- Are you available to review records and to provide your **expert opinion** regarding care provided by Dr. Z_____ to Mr. R_____?
- Thanks for considering this request. I look forward to hearing from you.
- Regards, Peter J_____

Mr. R_____v. Dr. Z. et.al.

- **The dentist (Z.) was sued for:**
  - Lack of informed consent (No Written Consent)
    - TMD-Tooth Movement (Damage)
  - Lack of adequate exam (No Records)
  - Lack of recall (monitoring) (No Records)
  - Lack of monitoring/testing for effectiveness (No Records)
  - Lack of patient instructions (No Records)

Squish like Grape

Lawsuits Are Coming!!!

Will you be ready?

Do this well or don't do it at all!!

Areas of Risk

- 1. General "Medical/Dental Risk Management"
  - Documentation
  - Informed consent
  - Communication with patients and physicians, Communicating test results
  - Bad outcomes that result in lawsuits
- 2. Risks Directly Associated with OAT
  - Complications of treatment
    - Tooth/jaw movement
    - TMD-Perio
    - Failed dental restorations/Adequate dentition/Adequate # of teeth to treat?
    - Stark Law/ Federal Anti-Kickback statutes
    - ***Third party liability***

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OSA

- ***OSA is a deadly condition and after completing this course you will have the knowledge and ability to save the lives of many patients.***
  - Sleep Physicians take this very seriously and so should you.
  - Malpractice cases in dentistry don't generally involve death of the patient.
  - DSM malpractice could.

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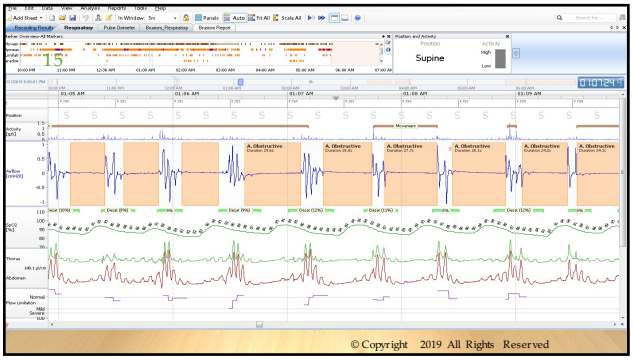

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OSA

- **OSA kills.**
  - *It take a determined DSM practitioner to successfully treat OSA patients!*
- **You cannot take 2 impressions and a bite and expect the patient to be fixed!**
  - That will not work!
  - Sadly that is what most dentists practicing DSM are doing.

17 FYI (The Problems)

- Before you can treat a patient!!
  - **1. A Sleep Physician must diagnose the patient with OSA.**
  - **Why?**
    - ***Diagnosis is a result of an overnight Sleep Study (PSG) (HST) which MUST be read by a Board Certified Sleep Physician who then provides a diagnosis!***
  - ***2. You must have a signed prescription for an Oral Appliance for the treatment of OSA from an MD (Sleep Physician) to you. (PCP?)***
    - **Why?**
  - **3. You must have a letter of medical necessity signed by the prescribing physician.**
    - **Why?**

18 Where Do You Get Your Patients!

- ***2 different ways to get patients to treat for OSA- You need to choose!***
  - Sleep Physician (Sleep Lab) Dependent
    - (You get your patients by referrals)
    - SP referral approach
    - PCP referral
  - Independent Practitioner Approach
    - (You get patients without MD Involvement)
    - Do not refer to a local Sleep Physician for diagnosis
    - Keep total control over the treatment of the patient

19 The LIST - 2 Approaches to DSM

- 1. ***Local Sleep Physician Dependent Approach***
  - This is the approach I endorse and will emphasize.
  - ***However, it can be very frustrating!***
- 2. ***Independent Practitioner Approach (MY Name)***
  - No Sleep Physician Exam (No PSG)
  - Rx from a Non-Sleep Physician (PCP)(Internist)(Cardiologist)
  - HSAT (Sleep Physician Diagnosis)
  - Dentist could be completely responsible for the health of the patient.

20 Independent Practitioner Approach

- ***IPA- Method developed by HSAT companies to get around referring patients to a SP?***
  - You screen your existing dental patients
  - You provide (order) HSAT!
  - ***Diagnosis is provided by SP working for a HSAT company!***
    - Insomnia? PLMs?
  - **No face-to-face examination with a local SP.**
  - ***Legally very risky.***
  - ***No referrals from SP's in your area!!!***

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Sleep Physician Referral

Local Sleep Physician dependent approach

- Dependent on SP, PCP, Internist, referrals
- Follows AADSM protocols
  - ***Legally defensible***
- ***Diagnosed by a SP after an overnight in-lab sleep study. (PSG) Co-morbid conditions are diagnosed!***
- ***Referred to your office by a SP/PCP after failing CPAP.***
- ***Frequently the patient is not offered Oral Appliance Therapy.***

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Sleep physician Referrals

- ***Local Sleep Physician dependent approach***
  - ***The SP (signs) writes an Rx for OAT for the treatment of OSA and signs a letter of medical necessity.***
    - ***Dentist provides the Rx and LOMN for SP to sign.***
  - Fabricate OAT- titrate
  - ***Patient returns to the sleep lab for final titration & to determine effectiveness. SP reads the sleep study.***
  - Patient is recalled by the dentist and sleep physician.

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Sleep Physician approach

- Good!
  - No direct cost in obtaining patients! Referral from physicians.
  - ***Shared liability with the sleep physician.***
    - ***Easier to legally defend.***
  - ***Allows you to file insurance and Medicare.***
- Bad!
  - **Difficult and time consuming to get established!!!**
  - There is a risk that the patients that you refer to the sleep physician will be placed on CPAP without being offered OAT. 82/0
    - *I have a technique to overcome this problem!!!!!!*

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Independent Practitioner approach

Large practice approach!!!

- Patients are screened from a large pool of (dental) patients. (Hygienist)
- HSAT is ordered by the dentist
- Diagnosed by a Sleep Physician- works for a HSAT Company.
- No face-to-face

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Warning

- **Independent Practitioner Approach *DOES NOT* follow AADSM/ADA Practice Parameters.**
  - *If you get sued, the AADSM Practice Parameters will be introduced into evidence as your Standard of Care.*
    - ***I charge $450/hour to get you out of trouble!!!***

William Bowman School of Law
Little Rock, Arkansas

Medical Negligence (Malpractice)

- Malpractice -Four Elements
  - ***Duty***
  - ***Breach of the duty***
    - *Breach of the Standard of Care*
  - ***Proximate Cause***
  - ***Damage***

SOC
Dental Sleep Medicine

- Question?
  - Who determines your Standard of Care for DSM
    - State Law/Statutes?
    - ADA Policy Statement on SDB?
    - AMA Policy Statement on HSAT Usage?
    - AADSM/AASM Practice Parameters/Policy Statements?
    - Your State Board of Dental Examiners?
    - Textbooks on DSM?
    - None of the Above?

Standard of Care- Negligence

- That degree of care which a ***reasonable and prudent practitioner*** should exercise in the same or similar circumstances.
- *DAMAGES= $$$$$$$$$*

Medical/Dental Malpractice

- ***Why do (Dentists) get sued?***
  - Breached the Standard of Care?
    - Yes?
    - No?

Medical/Dental Malpractice

- Dentists get sued for having a bad outcome on someone who is NOT a ***friend!!!!***

Ken's Creed #1

- ***Friends don't sue friends!***
- ***Ken's Creed***
  - MAKE FRIENDS
  - *If you have any patients who you would not go have a beer with or go to lunch with- Remove them from your practice*
    - If you are not naturally friendly, hire friendly staff members

SOC
Ken's Definition #1

- **What you should have done, but did not do**
  OR
- **What you did do, but should not have done!**
  - Determined by a jury
    - In Hindsight

Standard of Care
Ken's Definition#2

STANDARD OF CARE-

What ever the 12 individuals in the jury box say it is!!!!!

Standard of Care in DSM

- Standard of Care in DSM
- There isn't one!
- Any Questions?

SOC
Question

- *How many teeth per arch are necessary to fabricate a MAD?*
  - 0 (super-glue)
  - 0 (TRD)
  - 0 (implants)
  - 2
  - 6
  - 8
  - 10
  - 12

Scope of Practice- DSM

Scope of Practice:

3 Elements of SOP

- State definition- Practice of Dentistry
- Education/post graduate training & testing
  - Credentials (more prestigious the better)
- Limiting State Statutes and Board Opinions

Scope of Practice- *Definition*

- **Definition of SOP-**
  - *Procedures, actions, and processes*
  - *that a Dentist is permitted to undertake*
  - *in keeping with the terms of their professional license.*

Scope of Practice (Limitations)

- ***SOP*** Limited By:
  1. State definition of dentistry
  2. Education/Demonstrated Competency
  3. *State Statutes and/or State Board Rulings*
     a. Describe educational requirements and competency standards

SOC- Case
Perio Patient vs. Ken Berley DDS

1. **Patient had a history of perio**
2. **Breach of SOC?**
3. **Is fabricating a MAD for a perio patient a breach of the SOC?**
   - **Attachment Loss?**
   - Mild, Moderate, Severe perio?
   - Documentation? (Periodontal Charting) (Patient Records)
   - Consent?
   - Release?
   - Recall/Referral?

SOC Question

How much perio is too much to make a MAD?

- No bleeding on probing/no gingivitis
- No pockets over 3 mm/bleeding on probing OK
- No pockets over 4 mm
- 1 pocket over 5 mm but no more
- Molars with up to 6 mm but no furcation involvement
- Class 1 furcations but no class 2
- Class 2 furcations but no class 3
- Perio is OK if being treated by a Periodontist

Periodontal Disease

- 1. Document all signs of soft tissue disease or pocketing!
- 2. Determine if treatment is needed prior to MAD therapy!
- 3. Place a statement that
  - ***"Patient is aware that he has some signs and symptoms of "gingivitis/attachment loss/periodontal pocketing". In my professional opinion, these periodontal symptoms/pockets are not significant enough to prevent OAT. The patient understands that these symptoms could worsen with MAD therapy." The patient accepts this risk and wishes to proceed with Oral Appliance therapy."***

Case

Tooth Movement Patient vs. Ken Berley DDS

- Is failure to fabricate a ***Morning Repositioner a breach of SOC?***
  - ***Is exercise instructions adequate?***

SOC Question

- How many of you ***always*** provide a ***Morning Repositioner*** for all patients who undergo MAD therapy?
  - Yes/No?
    - *Studies on morning repositioning?*
      - AM Aligner?
      - Hard acrylic?
      - Maxillary/mandibular?

SOC- Case
TMD Patient vs. Ken Berley DDS

1. TMD Symptoms at intake (History of TMD)
   - Herbst was fabricated for OSA
2. *Is making an appliance on a TMD patient a breach of the SOC?*
   - Exam required?
   - Documentation required?

TMJ Examination

If a patient is not actively being treated for TMJ dysfunction but has some symptoms of TMD does that disqualify the patient for OAT?

- Yes?
- No?

SOC
Question

- How much TMD is too much?
  - TMD exam results?
  - Radiographs Before OAT?
    - CBCT?
    - Pana
    - 2D TOMO of the TMJ
  - MRI before MAD?

TMJ Examination

"Patient has some signs and symptoms of TMJ dysfunction but they do not rise to the level of a diagnosis of dysfunction or require any treatment at this time. The patient is aware of these symptoms and understands that they could worsen with time and require treatment. The patient understands this risk and has chosen to proceed with OAT treatment."

Arkansas Blue Cross Blue Shield Policy Manuel

- **Intraoral appliances** (tongue-retaining devices or mandibular advancing/positioning devices) meets primary coverage criteria of effectiveness and is covered in patients with OSA under the following conditions:
  - **OSA, defined by an apnea/hypopnea index (AHI) of at least 15 per hour OR**
  - **AHI of at least 5 events per hour in a patient with excessive daytime sleepiness or unexplained hypertension, AND**
  - A trial with CPAP has failed or is **contraindicated**, AND
  - The device is **prescribed by a treating physician**, AND
  - The device is **custom-fitted by qualified dental personnel**, AND
  - ***There is absence of temporomandibular dysfunction or periodontal disease***

SOC Question

How many of you will ***fabricate a Mandibular Advancement Appliance to treat snoring without a prescription*** from a physician/sleep physician?

- 34 year old patient
- Patient snores every night!!!!
- Patient had PSG 2 years ago- AHI 3.2
- Patient states that she is *always tired!*
- *ESS*= 18
- ***Do you need the involvement of patient's sleep physician/physician?***

Case

State Board of Ark. vs. Ken Berley DDS

1. Reported to the dental board by a Blue Cross for diagnosing OSA with an HSAT and fabrication of MAD without the participation.

Practicing outside the scope of Dentistry

Practicing medicine without a license

2. *Within the Scope of Practice in Arkansas?*

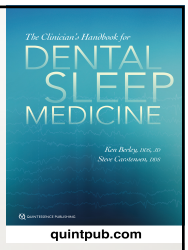
Arkansas Definition- Practice of Dentistry

- 17-82-102. DEFINITIONS.
- (1)(A) **"Practicing dentistry" means:**
  - (i) The **evaluation, diagnosis, prevention and treatment** by nonsurgical, surgical or related procedures of **diseases, disorders and conditions** of the oral cavity, *maxillofacial area and the adjacent and associated structures and their impact on the human body,* but not for the purpose of treating diseases, disorders and conditions unrelated to the oral cavity, maxillofacial area and the adjacent and associated structures; ……

Dental Education:

- **DSM Education:**
  - **ADA Lecturer (DSM Program)**
  - **Sleep Lab *(RPSGT)***
  - Textbook/Handbook for DSM
  - Post Graduate DSM Programs
    Diplomate-

American Board of Dental Sleep Medicine
American Sleep and Breathing Academy



Scope of Practice- DSM

Three Components

- State definition- Practice of Dentistry
- Education/post graduate training
- Limiting State Statutes and Board Opinions
  - ***Arkansas- No Board Opinions/Statutes on DSM***

AASM American Academy of SLEEP MEDICINE™

AMA resolution and AASM advocacy defend the sleep profession

- The American Academy of Sleep Medicine (AASM) has begun a new nationwide initiative to defend the scope of practice of physicians and advanced care providers who manage patients with obstructive sleep apnea from encroachment by dentists and other practitioners, who are not trained or qualified to diagnose a medical disease.

AASM/AMA cont.

- The ***AASM distributed to every state medical board a copy of the American Medical Association (AMA) resolution,*** Appropriate Use of Objective Tests for Obstructive Sleep Apnea (H-35.963).
- The resolution was introduced in November 2017 at the Interim Meeting of the American Medical Association, where it was adopted by the AMA House of Delegates.
- The adoption of the resolution followed the publication in October of the AASM position statement on the clinical use of a home sleep apnea test.

AASM/AMA cont.

- ***AMA resolution H-35.963 states:*** "It is the policy of our AMA that:
- 1. *Ordering and interpreting objective tests aiming to establish the diagnosis of obstructive sleep apnea (OSA) or primary snoring constitutes the practice of medicine;*
- 2. The need for, and appropriateness of, objective tests for purposes of diagnosing OSA or primary snoring or evaluating treatment efficacy must be based on the patient's medical history and examination by a licensed physician; and
- 3. *Objective tests for diagnosing OSA and primary snoring are medical assessments that must be ordered and interpreted by a licensed physician."*

Georgia Statute

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- Georgia Dental Board ruling. It states:
- *Depending upon the diagnosis of the type and severity, one possible treatment option for obstructive apnea is the use of oral appliances. The design, fitting and use of oral appliances and the maintenance of oral health related to the appliance falls within the scope of practice of dentistry.* ***The continuing evaluation of a person's sleep apnea, the effects of the oral appliance on the apnea, and the need for, and type of, alternative treatment*** *do not fall within the scope of dentistry. Therefore the prescribing of sleep apnea appliances does not fall within the scope of the practice of dentistry.* ***It is the position of the Board that*** *a dentist may not order a sleep study.* ***Home sleep studies should only be ordered and interpreted by a licensed physician.*** *Therefore, only under the orders of a physician should a dentist fabricate a sleep appliance for the designated patient and conduct only those tasks permitted under O.C.G.A. Title 43, Chapter 11.*

Case
State Board vs. Ken Berley DDS

Reported to the board for ordering an HSAT sleep study?

Practicing Medicine without a License

Practicing outside the Scope of Dentistry

- Scored and diagnosed by remote Sleep Physician?
- MAD prescription by PCP?

HSAT Usage?

- HSAT Protocol?
  - If your state does NOT have a regulation against HSAT usage for the diagnosis or OSA, can you assume that it is OK?
  - Can a dentist order an HSAT sleep study?
    - HSAT study ordered by Dentist?
    - Scored and diagnosed by remote Sleep Physician?
    - MAD prescription by PCP?

State of Pennsylvania vs. Dr. J……

- **No State Board Rulings on DSM**
- No Statutes on DSM
  - Dr. J… ordered an Ares HSAT for the diagnosis of OSA
  - HSAT was read and diagnosed by Dr. A….. Board Certified Sleep Medicine Specialist
  - Prescription was provided by the patient's PCP Dr. G……

Dr. J……. Cont!

- ***Charged with "Practicing Medicine Without a License"***
  - *Criminal Charge*
- Charged by *State Board of Dentistry for practicing outside the Scope of Dentistry"*

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Dr. J cont.

- Full investigation performed
- Brief submitted by Attorneys
- Charges Dropped (June 18, 2018)
- Dr. J
  - Suffered loss of revenue
  - Loss of time
  - Suffered Physically and Mentally

SOC Question

- Do you refer all patients to *a Sleep Physician for evaluation* even when the only symptom in mild-moderate snoring?
  - 32 y/o female-
  - BMI 24
  - No EDS
  - No diagnosed co-morbid diseases
  - No significant oral signs of OSA
  - *Has not had a PSG/HST!*

Case
Provisional Patient vs Ken Berley DDS

- Reported to the Board for providing a ***provisional appliance without a SP diagnosis?***
  - Not a temporary (Provisional Mandibular Advancement Device) (PMAD)
    - (Silent Nite or EMA)
      - Screening for PMAD?
        - HSAT?
        - GemPro?
          - ***Severe SDB Symptoms***
          - ***EDS***
          - ***Pregnancy***

Primary Snoring?

- What is the Protocol?
  - Is HSAT screening appropriate?
  - Is HSAT screening adequate?
  - When HSAT is negative (AHI <5) can you fabricate a Snore Guard without a physician prescription?
  - Do you have to refer everyone who snores to a sleep physician?

High Resolution Pulse Ox

- Is screening with High Resolution Pulse Oximetry within the SOP?
  - Why
  - Why not?

Case #7:
Pharyngometry Patient vs. Ken Berley DDS

- **SOP?**
- Turned in to the board for practicing outside the scope of dentistry?
- Is the use of Pharyngometry within the SOP of a Dentist?

Pharyngometry-SOC

- New York Definition of the Practice of Dentistry
- *Article 133, Dentistry and Dental Hygiene [and Certified Dental Assisting *]*
- § 6601. Definition of practice of dentistry.
- *The practice of the profession of dentistry is defined as **diagnosing**, treating, operating, or prescribing for **any disease**, pain, injury, deformity, or physical condition of the **oral and maxillofacial area related to restoring and maintaining dental health.** The practice of dentistry includes the **prescribing and fabrication of dental prostheses and appliances.** **The practice of dentistry may include performing physical evaluations in conjunction with the provision of dental treatment.***

ADA ***Policy Statement on the Role of Dentistry in the Treatment of Sleep-Related Breathing Disorders***

Sleep related breathing disorders (SRBD) are disorders characterized by disruptions in normal breathing patterns. SRBDs are potentially serious medical conditions caused by anatomical airway collapse and altered respiratory control mechanisms. Common SRBDs include snoring, upper airway resistance syndrome (UARS) and obstructive sleep apnea (OSA). OSA has been associated with metabolic, cardiovascular, respiratory, dental and other diseases. In children, undiagnosed and/or untreated OSA can be associated with cardiovascular problems, impaired growth as well as learning and behavioral problems.

ADA Policy Statement Cont.

Dentists can and do play an essential role in the multidisciplinary care of patients with certain sleep related breathing disorders and ***are well positioned to identify patients at a greater risk of SRBD.***

SRBD can be caused by a number of multifactorial medical issues and are therefore best treated through a collaborative model.

Working in conjunction with our colleagues in medicine, dentists have various methods of mitigating these disorders.

ADA Policy Statement Cont.

In children, the dentist's recognition of suboptimal early craniofacial growth and development or other risk factors may lead to medical referral or orthodontic/orthopedic intervention to treat and/or prevent SRBD.

Various surgical modalities exist to treat SRBD. Oral appliances, specifically custom-made, titratable devices can improve SRBD in adult patients compared to no therapy or placebo devices.

Oral appliance therapy (OAT) can improve OSA in adult patients, especially those who are intolerant of continuous positive airway pressure (CPAP).

Dentists are the only health care provider with the knowledge and expertise to provide OAT.

ADA Policy Statement Cont.

The dentist's role in the treatment of SRBDs includes:

1. Dentists are *ENCOURAGED to screen patients for SRBD* **as part of a comprehensive medical and dental history to recognize symptoms such as sleepiness, choking, snoring or witnessed apneas and an evaluation for risk factors such as obesity, retrognathia, or hypertension.** These patients SHOULD be referred, as needed, to the appropriate physicians for proper diagnosis.

ADA Policy Statement Cont.

2. In children, screening, through history and clinical examination may identify signs and symptoms of deficient growth and development, or other risk factors that may lead to airway issues. *If risk for SRBD is determined, intervention through medical/dental referral or evidenced based treatment may be appropriate to help treat the SRBD and/or develop an optimal physiologic airway and breathing pattern.*

ADA Policy Statement Cont.

3 Oral appliance therapy is an appropriate treatment **for mild and moderate sleep apnea, and for severe sleep apnea when a CPAP is not tolerated by the patient.**

4 When oral appliance therapy is prescribed by a physician through written or electronic order for an adult patient with obstructive sleep apnea, a dentist should evaluate the patient for the appropriateness of fabricating a suitable oral appliance. If deemed appropriate, a dentist should fabricate an oral appliance.

ADA Policy Statement Cont.

5. Dentists should obtain appropriate patient consent for treatment that reviews the treatment plan and any potential side effects of using OAT and expected appliance longevity.
6. Dentists treating SRBD with OAT should be capable of recognizing and managing the potential side effects through treatment or proper referral.

ADA Policy Statement Cont.

7. Dentists who provide OAT to patients should monitor and adjust the Oral Appliance (OA) for treatment efficacy as needed, or at least annually. As titration of OAs has been shown to affect the final treatment outcome and overall OA success, **the use of unattended cardiorespiratory (Type 3) or (Type 4) portable monitors may be used by the dentist to help define the optimal target position of the mandible**. A *dentist trained in the use of these portable monitoring devices may assess the objective interim results for the purposes of OA titration*.

ADA Policy Statement cont.

8. **Surgical procedures may be considered** as a secondary treatment for OSA when CPAP or OAT is inadequate or not tolerated. In selected cases, such as patients with concomitant dentofacial deformities, surgical intervention may be considered as a primary treatment.

9. Dentists treating SRBD should continually update their knowledge and training of dental sleep medicine with related **continuing education.**

ADA Policy Statement Cont.

10. **Dentists should maintain regular communications** with the patient's referring physician and other healthcare providers to the patient's treatment progress and any recommended follow up treatment.

11. **Follow-up sleep testing by a physician should be conducted to evaluate the improvement or confirm treatment efficacy** for the OSA, especially if the patient develops recurring OSA relevant symptoms or comorbidities.

Sleep Physician Letter

- Dr. Sleep Physician
- As you may be aware, the AASM recently published guidelines on the use of Home Sleep Testing. You may not be aware that the American Dental Association Dental Association also recently published a policy statement regarding sleep-related breathing disorders. Unfortunately, these policy statements and guidelines seem to be in direct contradiction with each other and therefore, I need your help in determining how you wish for me to handle MAD appliance titration and patient screening. If it is not too much trouble, I would like to get together with you and decide how WE will determine the efficacy of Oral Appliance Therapy here in Northwest Arkansas. Please let me know of a convenient time for us to meet to discuss this matter.
- Sincerely:

Be Smart!!!

- Inform Before You Perform!
- Document that you Informed!

Lawsuit (Mr. R____ v. Dr. Z et.al.)

- **Informed Consent?**
  - Easiest type of lawsuit to bring for a plaintiff's attorney.
    - Why?
  - Inadequate informed consent is the easiest type of lawsuit to prevent.
    - **Inform the patient and document the permission (consent)!**

Informed Consent

- ***If you don't have a written, signed informed consent when a plaintiff's attorney reviews a patient's record, you will be sued.***

Informed Consent

- **Informed Consent**
  - **Approximately 10% of the records I review have a signed informed consent document.**
  - I have never had a patient refuse to sign a consent.
    - No reason for a record to ever lack a consent for OAT!
    - This is your get out of jail free card. Use it!
  - **I have never seen a jury ignore a signed consent.**
    - **Frequently, patients claim a lack of consent.**
    - **A signed and witnessed consent will be upheld in court.**

Informed Consent

- **Informed consent:** can be said to have occurred when the ***Patient*** possesses: ***clear appreciation and understanding of the facts, implications, and future consequences of an action.***

Warning!!!

- You are about to know more about Informed Consent than you ever wanted to know!!!!

Informed Consent

- **Informed consent** is a ***process*** for getting permission before conducting a healthcare intervention on

Informed Consent

- Requirements to give informed consent, the individual concerned must have:
  - 1. Disclosure of facts
  - 2 Capacity
  - 3. Consent voluntarily given

"Proving what you did to obtain Consent"

Disclosure of Facts

- **Should be verbal as well as written!**
  - What the treatment entails: impressions, bites, radiographs, Home Sleep Studies
  - Native language of the patient
  - Method of treatment/appliances used
  - How treatment works/complications/alternatives!
  - Probability of success
  - No guarantee of success
  - Insurance and financial information
    - If you don't know!!! Tell the patient that you don't know!

Written Informed Consent

- Disclosure of Facts:
  - Must have a **GOOD** Informed Consent Document!
    - List any possible consequences of the treatment!
    - List treatment alternatives and that the patient has been presented with and understands alternative treatments!
    - The date the Patient Signed the Document!
    - Have a place for the Patient to sign and initial each page!
    - Contains verbiage that gives express consent for the treatment!
    - Has a **place for the witness to sign**

Capacity

- Definition: *The ability, capability, or fitness to do something; a legal right, power, or competency to perform some act.*
  - *An ability to comprehend both the nature and consequences of one's acts.*

Capacity Cont.

- ***Capacity*** – Relates to soundness of mind and to an intelligent understanding and perception of one's actions.
  - *It is the power either to create or to enter into a legal relation under the same conditions or circumstances as a person of sound mind or normal*

Capacity

- Patient must have the LEGAL Capacity to consent:
  - The patient must be competent and have the legal capacity to consent to the treatment.
    - The definition can vary by state and jurisdiction.
    - **If in doubt, make sure to get co-signers of the consent form!**
      - Parent
      - Spouse
      - Child/children- if very elderly and infirmed

Capacity to Consent

- **Legal Limitations to Informed Consent:**
- **Patient incapable of giving informed consent if:**
  - Impairments to reasoning and judgment which may make it impossible for someone to give informed consent include such factors as:
    - basic intellectual or emotional immaturity,
    - high levels of stress such as PTSD,
    - severe intellectual disability,

Capacity to Consent

- **Informed Consent is inadequate when:**
  - severe mental illness,
  - intoxication,
  - ****severe sleep deprivation,*****
  - Alzheimer's disease, or
  - being in a coma

Voluntary Consent

- Consent must be given:
  - **Voluntarily**
    - Without coercion
    - Patient must not be under pressure or duress
    - Patient must be free to say no!!!!!!!

Conclusion:

1. Scope of Practice?
2. Standard of Care ?
3. Become friends with local SP
4. Adapt ADA Policy statement
5. Get consent for treatment & document the consent

My Only Regret is that I didn't start Sooner!

Thank you!

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